STATE OF MICHIGAN

COURT OF APPEALS

SHERRI MARTIN,

Plaintiff-Appellant,

v

DAVID LEDINGHAM, M.D., DAVID RYNBRANDT, M.D., ANDRIS KAZMERS, M.D., and PETOSKEY SURGEONS, P.C.,

Defendants,

and

NORTHERN MICHIGAN HOSPITAL,

Defendant-Appellee.

FOR PUBLICATION
January 27, 2009
9:00 a.m.

No. 280267
Emmet Circuit Court
LC No. 05-009021-NH

Advance Sheets Version

Before: Talbot, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to Northern Michigan Hospital (defendant). This case arises from a surgical procedure performed on plaintiff and the care that followed. Plaintiff alleges that defendant's nurses were negligent in their failure to report her worsening postsurgical condition to physicians and that this negligence was the proximate cause of her injuries. We conclude that, because there was no evidence showing that plaintiff's treatment would have been changed if better reporting had occurred, the trial court properly granted summary disposition. We have decided this appeal without oral argument pursuant to MCR 7.214(E).

Following the voluntary dismissal of the doctors who were sued in this case, defendant moved for summary disposition. It relied on affidavits from Dr. David Rynbrandt and Dr. Jeffrey Beaudoin stating that they would not have changed the course of plaintiff's treatment had nurses employed by defendant informed them of plaintiff's condition as plaintiff alleged they should have. Thus, defendant argued, plaintiff could not show that the alleged negligence of defendant's nurses was the proximate cause of her injuries. The trial court agreed and granted the motion.

On appeal, plaintiff contends that summary disposition was inappropriate because she had produced evidence showing that, had the nurses properly reported, a notified doctor would have had the duty to change plaintiff's treatment. So, plaintiff argues, the affidavits of Dr. Rynbrandt and Dr. Beaudoin do not preclude plaintiff from presenting her failure-to-report theory to a jury. Additionally, plaintiff contends that those doctors' affidavits involved issues of credibility and state of mind and that summary disposition was not appropriate in light of those issues. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

Summary disposition of all or part of a claim or defense may be granted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted, MCR 2.116(G)(5), in the light most favorable to the nonmoving party, *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004), and all reasonable inferences must be drawn in favor of the nonmovant, *Scalise, supra* at 10. The party opposing the motion must show that a genuine issue of disputed fact exists by producing evidentiary materials setting forth specific facts. MCR 2.116(G)(4); *AFSCME v Detroit*, 267 Mich App 255, 261; 704 NW2d 712 (2005). The disputed factual issue must be material to the dispositive legal claims. *Auto Club Ins Ass'n v State Automobile Mut Ins Co*, 258 Mich App 328, 333; 671 NW2d 132 (2003). Speculation and conjecture are insufficient to create an issue of material fact. *Ghaffari v Turner Constr Co (On Remand)*, 268 Mich App 460, 464; 708 NW2d 448 (2005).

Proof of causation requires both cause in fact and legal, or proximate, cause. *Haliw v Sterling Hts*, 464 Mich 297, 310; 627 NW2d 581 (2001). Cause in fact generally requires a showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. *Craig v Oakwood Hosp*, 471 Mich 67, 86-87; 684 NW2d 296 (2004). Cause in fact may be established by circumstantial evidence, but, to be adequate, such evidence must give rise to reasonable inferences of causation, not mere speculation. *Skinner v Square D Co*, 445 Mich 153, 163-164; 516 NW2d 475 (1994).

As cause-in-fact evidence, plaintiff presented deposition testimony from both a doctor and a nurse suggesting that the standard of care required defendant's nurses to provide earlier and better reports regarding plaintiff's postsurgical condition, both to the operating surgeon and up the chain of command beyond that physician if no appropriate action was taken. The doctor further testified that, had that occurred, a different course of treatment should have been undertaken that would have prevented or mitigated plaintiff's injuries.

This evidence was insufficient to create a genuine issue on factual causation because it only concerned what hypothetical doctors should have done had better reports been provided.[1] In contrast to that, the real doctors involved with plaintiff's care testified about what they would actually have done had they received the nurse reports plaintiff claims should have been made. Dr. Rynbrandt, who had performed the surgery on plaintiff, was aware of postsurgical complications shortly thereafter and took steps to address them. Plaintiff's claim is that defendant's nurses should have done more to inform Rynbrandt about further developments in the complications. However, in his affidavit, Rynbrandt repeatedly stated that he had ample information regarding plaintiff and her situation throughout the period during which plaintiff alleges care was deficient, that he reviewed plaintiff's chart and was otherwise adequately apprised of developments, and that nothing the nurses could have done differently would have altered the care that he provided plaintiff.

Similarly, there is no factual support for plaintiff's claim that, had defendant's nurses gone up the chain of command to someone with higher authority, a better course of treatment would have been provided. Dr. Beaudoin was the chair of the general surgery section at the hospital, with authority over Dr. Rynbrandt. Dr. Beaudoin became involved with plaintiff's care about a week after the initial surgery and ultimately performed a second operation to address her complications. He testified by affidavit that, had he been called into the case earlier as plaintiff alleges the nurses should have done, he would have examined plaintiff and discussed her care with Rynbrandt. However, Dr. Beaudoin further testified that his earlier involvement would have yielded no additional information not already available to Dr. Rynbrandt and that he would not have suggested or requested any change in the care or treatment being provided by Dr. Rynbrandt.

In sum, the facts presented in this case demonstrate that, had defendant's nurses made the reports plaintiff alleges they should have, plaintiff's care and treatment would not have been changed whatsoever. Thus, the facts simply do not support plaintiff's claim that the nurses' failure to report was a cause in fact of the injuries she suffered as a result of her postsurgical treatment. The facts did not establish a "reasonable inference[ ] of causation," and a finding of causation from these facts would be "mere speculation" at best. *Skinner, supra* at 164. We note that courts in other states have similarly concluded that liability can be imposed for a failure to adequately report to a physician only if the physician would have, in fact, altered a diagnosis or treatment had a better or earlier report been received. See, e.g., *Albain v Flower Hosp*, 50 Ohio St 3d 251, 265; 553 NE2d 1038 (1990) overruled on other grounds by *Clark v Southview Hosp & Family Health Ctr*, 68 Ohio St 3d 435 (1994); *Seef v Ingalls Mem Hosp*, 311 Ill App 3d 7, 19-20; 724 NE2d 115 (1999).

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[1] Considering plaintiff's hypothetical argument, we note that, had the doctors negligently failed to change plaintiff's treatment upon receiving better reports from defendant's nurses, no liability would be imposed on defendant as a result. Had all this occurred, those facts could well present another theory of liability against the doctors, but, unlike the nurses, they are not agents of the hospital. See *Seef v Ingalls Mem Hosp*, 311 Ill App 3d 7, 16; 724 NE2d 115 (1999).

Finally, we conclude that a fact-finder's determination that there was cause in fact merely because the fact-finder disbelieved the doctors involved would be exactly the kind of speculation that *Skinner* disapproved in the absence of any affirmative cause-in-fact proof advanced by plaintiff. See also MCR 2.116(G)(4) (indicating that plaintiff was required to "set forth specific facts" in response to defendant's summary disposition motion). We conclude that the trial court properly granted defendant summary disposition under the principles explained by our Supreme Court in *Skinner*.

In light of our resolution of this issue, we need not consider defendant's other argument.

We affirm.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Christopher M. Murray